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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,168	03/31/2004	Palpu Pushpangadan	11378.60USWI	7139
23552	7590	01/14/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			TATE, CHRISTOPHER ROBIN	
		ART UNIT	PAPER NUMBER	
		1654		

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/815,168	PUSHPANGADAN ET AL.
	Examiner	Art Unit
	Christopher R. Tate	1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-34 are presented for examination on the merits.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 22-34 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 13, and 22 are rendered vague and indefinite by the phrase "comprising extracts of plant *Gentiana kurroo* of concentration ranging between 2-5 wt %, *Murraya koenigii* of concentration ranging between 8-15 wt %, *Allium sativum* of concentration ranging between 2-4 wt %, *Zingiber officinalis* of concentration ranging between 2-5 wt %, *Amorphopallus campanulatus* of concentration ranging between 1-10 %, and pharmaceutically acceptable

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additive(s)" (recited in each of these claims). As drafted, this overall phrase is grammatically incorrect and awkward and is, thus, confusing. In addition, it is unclear as to what the percentage range recited for %, *Amorphopallus campanulatus* is in relation to - e.g., by weight, by volume, or something else? For clarity, it is suggested that this phrase be amended to read as follows:

-- comprising extracts of the plants *Gentiana kurroo* at a concentration ranging between 2-5 wt %, *Murraya koenigii* at a concentration ranging between 8-15 wt %, *Allium sativum* at a concentration ranging between 2-4 wt %, *Zingiber officinalis* at a concentration ranging between 2-5 wt %, *Amorphopallus campanulatus* at a concentration ranging between 1-10 wt %, and one or more pharmaceutically acceptable additives --. [This phrasing would also provide better antecedent basis for the plural recitation "the aforementioned plants" in step (a) of claim 13.]

Claims 22-34 provide for the use of , but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

All other claims depend directly or indirectly from rejected claims and are, therefore, also rejected under USC 112, second paragraph for the reasons set forth above.

The claims are free of the art. The prior art of record does not teach nor reasonably suggest a pharmaceutical composition comprising the recited herbal ingredients within the (synergistic) amount ranges instantly claimed.

Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. For completeness of record, it is requested that the international search report and opinion (if available) of the parent PCT (i.e., PCT/IB03/06106) cited in the Continuation data set forth in the Preliminary amendment of March 31, 2004 be submitted for the Examiner's review in response to this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (571) 272-0970. The examiner can normally be reached on Mon-Thur, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher R. Tate
Primary Examiner
Art Unit 1654